

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 01-0184P****Use Tax**

Calendar Years 1997, 1998, and 1999

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ISSUE(S)**I. Tax Administration – Penalty****Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a restaurant chain with several restaurants in the state of Indiana.

Upon audit it was discovered that the taxpayer failed to remit use tax on clearly taxable purchases such as water heaters, baby changing tables, locks, interior decorations, vacuums, computer equipment, signs, curtains, sinks, shelving, security cameras, doors, tables, chairs, etc. The audit allowed credit for items upon which sales tax was paid in error at point of purchase, i.e., items that are tax exempt.

I. Tax Administration – Penalty**DISCUSSION**

At issue is whether the taxpayer was negligent in reporting its use taxes. A review of the audit report indicates that clearly taxable items were not self-assessed tax. Approximately twenty-five percent (25%) of the tax due (net of credits) was not self-assessed in calendar year 1999.

Taxpayer protests the penalty based upon reasonable cause, primarily, that it did not maliciously avoid payment of sales tax and has done the best job possible with its limited resources.

The penalty is appropriate as the taxpayer failed to self assess use tax on clearly taxable items, primarily capital assets, and has failed to provide reasonable cause for the failure to remit the tax.

FINDING

Taxpayer's protest is denied.